

CITY OF SAN JOSÉ, CALIFORNIA  
Redevelopment Agency of the City of San Jose  
50 W. San Fernando Street, Suite 1100  
San José, California 95110

## STAFF REPORT

Hearing Date/Agenda Number  
PC Agenda: 12-10-03 Item: 3.i.

File Number  
RCP03-023

Application Type  
Conditional Use Permit, Liquor License Exception

Council District  
3

Planning Area  
Downtown Core

Assessor's Parcel Number(s)  
259-33-021

### PROJECT DESCRIPTION

Completed by: Amie Glaser

Location: 225 West Santa Clara Street

Gross Acreage: 0.95

Net Acreage: 0.95

Net Density: n/a

Existing Zoning: CG

Existing Use: Commercial Office Building

Proposed Zoning: no change

Proposed Use: Commercial Office Building with an Emergency Generator on the Roof

### GENERAL PLAN

Completed by: AG

Land Use/Transportation Diagram Designation  
Core Area

Project Conformance: ☒ Yes ☐ No  
☒ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: AG

North: Parking Lot

CG (Commercial General)

East: Commercial Restaurants

CG (Commercial General)

South: Office Building

CG (Commercial General)

West: Commercial Hotel and a Vacant Lot

CG (Commercial General)

### ENVIRONMENTAL STATUS

Completed by: AG

☒ Environmental Impact Report found complete on April 27, 1999  
☐ Negative Declaration circulated on

☐ Exempt  
☐ Environmental Review Incomplete

### FILE HISTORY

Completed by: AG

Annexation Title: Original City

Date: 3/23/1850

### HISTORIC STATUS: Not Historic

Completed by: AG

### REDEVELOPMENT AGENCY RECOMMENDATIONS AND ACTION

☐ Approval  
☒ Approval with Conditions

Date: 12-10-03

Approved by: \_\_\_\_\_

Approved by: \_\_\_\_\_  
☐ Action ☐ Recommendation

### APPLICANT

### OWNER

Nima Gujar  
96 North Second Street  
San Jose, CA 95113

Opus West Management Corporation  
225 West Santa Clara Street  
San Jose, CA 95110

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**Completed by: AG**

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**Department of Public Works**

None Received

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**Other Departments and Agencies**

None Received

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**GENERAL CORRESPONDENCE**

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None Received

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**ANALYSIS AND RECOMMENDATIONS**

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**PROJECT DESCRIPTION**

The applicant requests a new Conditional Use Permit to allow a back-up/emergency generator. The project site is occupied by an existing 16 story office building located at 225 West Santa Clara Street. The back-up/emergency generator will be constructed on the roof of the building and will be used only in the event that there is a power failure. The generator will be enclosed with screening material to muffle sound levels and to provide architectural screening of the generator equipment.

The project site is in the Commercial General (CG) Zoning District. A CUP is required in the CG Zoning District for back-up/emergency generators that will exceed the noise standard of 55dBA as measured at the property line when operating. Back-up/emergency generators with noise levels less than 55dBA can be approved through a Special Use Permit, which requires a Director's Hearing rather than Planning Commission review.

**GENERAL PLAN CONFORMANCE**

The project site is designated Core Area on the San Jose 2020 Land Use/Transportation Diagram. This designation allows a range of "office, retail, service, residential, and entertainment uses in the Downtown Core Area." Given the project's location, existing office use is consistent with the General Plan and the Core Area designation. The back-up/emergency generator is an accessory use to the office use on the site and is therefore consistent with the General Plan.

**ENVIRONMENTAL REVIEW**

Pursuant to Section 15180 of the 2001 CEQA Guidelines, the City of San Jose has determined that the project will not create new significant environmental impacts beyond those analyzed in the Final Supplemental Environmental Impact Report (SEIR) entitled "Downtown Strategy Plan" certified by City Council Resolution No. 68839 on April 27, 1999.

## **ANALYSIS**

Through the subject CUP, the applicant proposes to place a back-up/emergency generator on the roof of an existing office building. Such uses are subject to the Zoning Ordinance and the Strategy 2000 Plan for the Downtown Core. The objective of these policies and ordinances is to ensure that back-up/emergency generators are compatible with surrounding land uses. A key provision of these policies is to ensure that back-up/emergency generators not be approved unless the facilities can operate without detriment to nearby residential uses and the general welfare of the surrounding area. The following issues address the project's operational compatibility within its surroundings.

### **Downtown Strategy Plan**

The project is also consistent with the *Strategy 2000* guidelines for the Downtown Core. Page 65 of the Strategy 2000 Plan states that, "Large mechanical and electrical equipment such as generators, which create significant sound and air pollution, should be located on building roofs away from the street." The proposed back-up/emergency generator is consistent with this provision of the Strategy 2000 Plan.

### **Land Use Compatibility**

Commercial land uses and structures surround the project site, except to the west where a commercial hotel is located. The surrounding properties were notified of the CUP hearing as a part of this application and they have an opportunity to comment on the application, staff has received no comments. .

### **Noise Requirements**

The proposed back-up/emergency generator is located on the roof of an existing commercial building. The proposed generator will emit noise at a level of approximately 67dBA at the nearest property line when operating (See Attached Memo from Mei Wu Accoustics dated August 20, 2003). The generator will only operate in the event of a power failure and yearly operations will be restricted to a maximum of 100 hours per year so as to minimize noise impacts to surrounding properties. The existing building is 16 stories high and the generator will be placed in a screened enclosure that will minimize noise emitted while the generator is operating. In addition, the property is located within the flight path of the San Jose Airport so ambient noise levels are quite high. Because of these factors, the proposed generator is not expected to impact the surrounding properties

### **Public Outreach**

Notice of the proposed project was circulated to properties within 500 feet of the subject property.

## **CONCLUSION**

Based on the above analysis, staff concludes that the proposed project is in conformance with the requirements of the General Plan, Zoning Ordinance, and Downtown Strategy 2000 Plan; and that the proposed use, as conditioned, is compatible with its surroundings.

**FACTS**

Agency staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission determines that the following are the relevant facts regarding the proposed project:

1. This Conditional Use Permit is for the location of standby/back-up power generators that exceed a noise level of 55dBA as measured at the property line.
2. A Noise Study, prepared by Mei Wu Acoustics, dated August 20, 2003, states that the proposed project will emit noise at a maximum level of 67dBA at the nearest property line.
3. Section 20.80 of the San Jose Municipal Code requires a Conditional Use Permit for the location of standby/back-up power generators in the Commercial General (CG) Zoning District.
4. Section 20.80.2030 of the San Jose Municipal Code provides evaluation criteria for the location of standby/back-up power generators. The Planning Commission must determine whether the benefits of the proposed standby/back-up power generators outweigh the impacts based on these criteria.
5. The subject site is in the Downtown Commercial General (CG) Zoning District.
6. The subject site is designated Core Area on the San Jose 2020 General Plan Land Use/Transportation Diagram.
7. The project will not create new significant environmental impacts beyond those analyzed in the Final Supplemental Environmental Impact Report (SEIR) entitled "Downtown Strategy Plan" certified by City Council Resolution No. 68839 on April 27, 1999.
8. A Bay Area Air Quality Management District (BAAQMD) Permit has been issued for the proposed generator and the proposed use complies with all BAAQMD requirements.

**RECOMMENDATION**

The Planning Commission of the City of San Jose concludes and finds, based upon an analysis of the above-stated facts, that:

1. Upon issuance of this Conditional Use Permit, the installation of a standby/back-up generator, located on the 0.95-acre site at 225 South Market Street, shall comply with San Jose Municipal Code, Section 20.80.2030 in that a Conditional Use Permit is required for the installation of an electrical power generation facility.
2. The project is consistent with the Commercial General (CG) Zoning District and Core Area General Plan designation in that the proposed generator will be used as a standby/back-up power source for uses that exist in the building.

3. The project will not create new significant environmental impacts beyond those analyzed in the Final Supplemental Environmental Impact Report (SEIR) entitled "Downtown Strategy Plan" certified by City Council Resolution No. 68839 on April 27, 1999

## **FINDINGS**

Based upon the above-stated analysis and subject to the conditions set forth below, it is recommended the Planning Commission find that:

1. The proposed use at the location will not:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area in that the proposed standby/back-up power generator meets the Bay Area Air Quality Management District standards, the proposed generators will operate less than 100 hours per year. In addition there are no sensitive receptors within 500 feet of the project site;
  - b. Impair the utility or value of property of other persons located in the vicinity of the site in that the proposed project will provide backup power for the tenants of the building. The generator will be located on the roof the existing building at the site. The generators will not exceed noise standards nor will they be visible from the street or neighboring buildings;
  - c. Be detrimental to public health, safety, or general welfare in that the project meets air quality and noise standards; and
2. The proposed site is adequate in size and shape to accommodate the development features necessary to integrate said use with the uses in the surrounding area because the project site already includes the improvements needed for the proposed uses which are compatible with the uses in the surrounding area; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate in that the proposed project will not need to provide offsite improvements to the existing roadway network or transit facilities; and
  - b. By other public or private service facilities as are required in that the scale of the project will not necessitate expansion of existing service facilities.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purposes specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of the following conditions. Each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property and all persons who use the subject property for the use conditionally permitted hereby.

## **CONDITIONS PRECEDENT**

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all requirements of the below enumerated precedent conditions all have been performed or caused to be performed and this Resolution has been recorded with the County

Recorder. The subject property shall be maintained and utilized in compliance with the below enumerated conditions throughout the life of the permit:

1. **Acceptance of Permit and Conditions.** The “Acceptance of Permit and Conditions” form shall be *signed, notarized, and returned to the Redevelopment Agency within 60 days from the date of issuance of the Permit*. Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this Permit.

#### CONCURRENT CONDITIONS

1. **Conformance with Plans.** The project shall be completed in conformance with the approved plans, entitled “Opus, Generator Package”, prepared by Reel Grobman.
2. **Nuisance.** This use shall be completed in a manner that does not create a public or private nuisance. Any nuisance must be abated immediately upon notice by the City of San Jose or the Redevelopment Agency.
3. **Construction Hours.** All activities related to construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, for any on-site and off-site work within 500 feet of any residential unit.
4. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.

#### CONDITIONS SUBSEQUENT

1. **Code Conformance.** No part of this approval shall be construed to permit a violation of any part of the San Jose Municipal Code.
2. **Revocation.** This Conditional Use Permit is subject to revocation for violation of any of its provisions or conditions.
3. **Operation.** This Stand-by or Backup Electrical Power Generation Facility shall be operated only during interruptions of electrical service from the distribution system or transmission grid due to circumstances beyond the operator’s control.
4. **Responsibility.** The Applicant shall agree to be responsible for any damage caused by its activities to any existing public or private structures or facilities.
5. **Liability.** The Applicant shall indemnify and hold harmless the City and any officers and employees thereof against and from all claims, loss, liability, damages, judgments, decrees, costs and expenditures which the City of such officer or employee may suffer, or which may be recovered from or obtainable against the City of such officer or employee, proximately caused by and growing out of or resulting from the exercise of the Permit.
6. **Hours of Operation.** The generator shall not operate for more than a total of 100 hours per year.

7. **Hazardous Materials Storage.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored and in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
8. **Exhaust Stack.** The generator shall be connected to an exhaust stack, which shall have an outlet at an elevation a minimum of 40 feet in height as measured from existing grade, and no closer than 1000 feet to the nearest residential property line.
9. **CARB-Certified Ultra Low Sulfur Fuel.** Applicant shall use CARB-certified ultra low sulfur fuel to operate stand-by/backup electrical power generation facilities (generators).
10. **Emergency Power.** Testing of emergency power equipment shall be limited to weekdays between the hours of 8:30 a.m. to 4:30 p.m. and shall not exceed twenty-four (24) hours per year.
11. **Record of Operation.** The generator shall include a non-resettable totalizing counter to record all hours of operation. The applicant shall maintain an accurate record of the operation of the standby/back-up generator to the satisfaction of the Executive Director of the San José Redevelopment Agency and appropriate local, State, and Federal agencies. These records shall cover at least the following items:
  - a. Hours of operation for testing and maintenance.
  - b. Dates and hours of operation for discretionary use in the event of a power failure.
  - c. Operational problems, complaints, and difficulties.
  - d. A log of Special Occurrences to include the following: fires, earthquakes, unusual and sudden settlement, injury and property damage accidents, explosions, discharge of hazardous or other wastes not permitted in the class of the site involved, citizen complaints received, flooding, unscheduled shutdowns, and other unusual occurrences.
  - e. Dust and litter control efforts and results.
  - f. Description of materials received, identified by source and material.
  - g. The records shall be open to inspection by the City of San José and other duly authorized regulatory and enforcement agencies during normal business hours.
11. **Building Permit.** If this Conditional Use Permit includes construction of any buildings or structures, said Permit shall expire and be of no further force or effect if the construction of buildings or structures pursuant to a valid Building Permit has not commenced within two (2) years from the date of the adoption of this Resolution. No further Building Permit shall be issued after expiration of the Conditional Use Permit pursuant to this condition or to a time limit condition. However, nothing herein shall be deemed to prevent the renewal or resistance of any Building Permit, which expires by its own terms prior to the expiration of this Permit.

12. **Compliance Review.** A Compliance Hearing may be required at the discretion the Planning Commission at any time during the period of time this permit is in effect.
13. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission or by the City Council on appeal, at any time, regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, of the Chapter 20.44, of Title 20, of the San Jose Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use presently conducted creates a nuisance.